



COMMONWEALTH OF KENTUCKY
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23-ORD-347

December 28, 2023

In re: Jerry D. Lotz/Louisville Metro Department of Corrections

Summary: Louisville Metro Department of Corrections (“the Department”) did not violate the Open Records Act (“the Act”) when it denied an inmate’s request for records that do not contain a specific reference to him.

Open Records Decision

Jerry D. Lotz (“the Appellant”) is currently incarcerated at the Lee Adjustment Center. On October 23, 2023, he submitted a request to the Department for copies of the “arrest history report” of one of his family members. In a response dated November 6, 2023, the Department denied the request under KRS 197.025(2) because the requested report does not specifically refer to the Appellant. However, the postmark of the envelope containing the Department’s response is dated November 14, 2023. The Appellant then initiated this appeal by correspondence dated November 27, 2023, but the envelope containing his appeal was postmarked November 28, 2023.

Before addressing the merits of the appeal, the Office must assure itself that it has jurisdiction. Under KRS 197.025(3), “all persons confined in a penal facility shall challenge any denial of an open record [request] with the Attorney General by mailing or otherwise sending the appropriate documents to the Attorney General within twenty (20) days of the denial pursuant to the procedures set out in KRS 61.880(2) before an appeal can be filed in a Circuit Court.”¹ Thus,

¹ Unlike the Open Meetings Act, which requires a complainant to bring his or her appeal within 60 days of the denial, or 60 days from the date of the complaint if the public agency fails to respond, KRS 61.846(2), the Open Records Act does not itself contain a statute of limitations. As such, it would appear the statute of limitations for a person *not* confined in a penal facility to challenge a public agency’s denial of a request is five years from the date of the denial. *See* KRS 413.120(2) (“An action upon a liability created by statute, when no other time is fixed by the statute creating the liability”

KRS 197.025(3) requires those “confined in a penal facility” to exhaust their administrative remedies by initiating an appeal with the Office before proceeding with an action in circuit court, and they must exercise that administrative remedy “by mailing or otherwise sending the appropriate documents to the Attorney General within twenty (20) days of the denial.” *Id.* Because an inmate only perfects his or her appeal “by mailing . . . the appropriate documents,” the Office does not consider the date the inmate writes on his or her appeal. *See, e.g.*, 18-ORD-233 (dismissing an untimely appeal based on the postmark of the inmate’s correspondence). Rather, the Office prescreens an inmate’s appeal by reviewing the postmark on the envelope containing it and the date of the public agency’s denial to ensure the inmate mailed the documents within 20 days. Here, the Department’s denial was dated November 6, 2023, and the postmark of the Appellant’s appeal was November 28, 2023, or 22 days later. Accordingly, the Office summarily dismissed the appeal when it was received on November 30, 2023.

However, in summarily dismissing the appeal, the Office did not review the envelope containing the Department’s denial that the Appellant had provided. After receiving the Office’s notice dismissing the appeal as time barred, the Appellant argued the Office improperly dismissed his appeal because the Department’s denial was not postmarked until November 14, 2023, making his appeal mailed on November 28 timely. Essentially, the Appellant argues that if the postmark of his appeal is the date used to judge timeliness, then the postmark of the agency’s denial—not the date written on the denial—should also be used to judge timeliness. The Office agrees, and therefore, finds that it has jurisdiction to process the Appellant’s appeal.²

Nevertheless, the Department properly denied the Appellant’s request. Under KRS 197.025(2), “the department shall not be required to comply with a request for any record from any inmate confined in a jail or any facility or any individual on active supervision under the jurisdiction of the department, unless the request is for a record which contains a specific reference to that individual.” “The department,” as used in KRS 197.025(2), refers to the Department of Corrections. *See* KRS 197.010(3). But the Office has long held that all correctional facilities, including county jails, may invoke KRS 197.025(2), not just the Department of Corrections. *See, e.g.*, 10-ORD-198; 95-ORD-121. Moreover, the Office has held that a record must specifically reference the inmate-requester by name before he is entitled to inspect it. *See, e.g.*, 22-ORD-119; 22-ORD-087; 17-ORD-119; 09-ORD-057; 03-ORD-150. A record does not contain a “specific reference” to the requesting inmate under KRS 197.025(2) simply

“shall be commenced within five (5) years after the cause of action accrued”). But for those who *are* “confined in a penal facility,” the statute of limitations is 20 days from the date “of the denial.” KRS 197.025(3).

² The Office reaches this conclusion only because the Appellant provided a copy of the envelope containing the Department’s denial with his original attempt to appeal, not after he received the Office’s notice of dismissal. In other words, he provided “the appropriate documents” within 20 days of the denial.

because it is relevant to, pertains to, or personally affects him. *See, e.g.*, 22-ORD-087; 17-ORD-119; 17-ORD-073. Although the Appellant claims he has a special need for the requested documents, the Department is not required to comply with his request. KRS 197.025(2). Accordingly, the Department did not violate the Act when it denied the Appellant's request for records that do not specifically refer to him by name.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to KRS 61.880(3), the Attorney General shall be notified of any action in circuit court, but shall not be named as a party in that action or in any subsequent proceedings. The Attorney General will accept notice of the complaint emailed to OAGAppeals@ky.gov.

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